STATE OF MICHIGAN

COURT OF APPEALS

AHMED HARAJLI and FATMA HARAJLI, Plaintiffs-Appellees,	UNPUBLISHED October 3, 2006
v	No. 262651 Wayne Circuit Court
KHALIL HARAJLI, Defendant-Appellant.	LC No. 01-130236-CK

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court judgment, entered after a bench trial, holding that $100,000 given to defendant by plaintiffs was a personal loan and not money for a joint venture. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

On appeal, defendant claims that the transaction between the parties was a joint venture and that the trial court clearly erred in finding otherwise. He argues that the evidence established that he had entered into a joint venture with plaintiffs whereby he acted as a stock broker for plaintiffs' funds with all the risks attendant to such an endeavor.

We review the trial court's factual findings following a bench trial for clear error, but review its legal conclusions de novo. *Ambs v Kalamazoo Co Road Comm*, 255 Mich App 637, 651-652; 662 NW2d 424 (2003). Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id*. at 652. The "great weight of the evidence" standard cited by defendant on appeal is irrelevant in the setting of a bench trial; following a bench trial, challenges to the weight of the evidence are properly reviewed under the "clearly erroneous" standard. *Id*. at 652 n 14.

Whether a joint venture existed is a question for the trial court. *Berger v Mead*, 127 Mich App 209, 214; 338 NW2d 919 (1983). The elements of a joint venture are: (1) an agreement indicating an intention to undertake a joint venture; (2) a joint undertaking; (3) a single project for profit; (4) a sharing of profits and losses; (5) contribution of skills or property by the parties; and (6) community interest and control over the enterprise. *Id*. at 214-215. "The key consideration is that the parties intended a joint venture." *Id*. at 215. The presence of these elements serves to distinguish a joint venture from a mere loan agreement. See *Georges v Ballard*, 20 Mich App 554, 555-557; 174 NW2d 311 (1969).

There is no dispute that plaintiffs gave $100,000 to defendant to invest in the stock market. They disagree, however, regarding whether the money was a loan subject to repayment or whether it was a joint venture, which carried the full risk of loss. Plaintiff Ahmed Harajli (plaintiff) testified that the money was a loan to defendant and that this fact was memorialized on the memo lines of the two $50,000 checks. The word "loan" clearly appears on both memo lines. Although defendant suggested the checks may have been altered, he offered no proof supporting that allegation.[1] Plaintiff further testified that he expected no interest or profits, and that the money was merely a loan between brothers. Two of defendant's sisters also loaned him money at about the same time to invest in the stock market. This money was apparently repaid to the sisters upon their requests, and there was no claim by defendant that these transactions with his sisters were actually joint ventures. Plaintiff's son Allen testified that he overheard a conversation between plaintiff and defendant that suggested the money was subject to repayment within seven days of plaintiff's request. When the money was not repaid, Allen, in an apparent attempt to restore familial harmony, tried to set up an installment plan for defendant to repay plaintiff. When Allen met with defendant for that purpose, defendant apparently never claimed that the transaction had been a joint venture. According to Allen, "[defendant] told me he was going to try [to repay the debt], and he went into tears and told me that he was going to pay it, whether—no matter what he had to do, he was going to pay it back." Allen stated that he did not believe defendant's trial testimony because defendant had always indicated that he would repay the money to plaintiffs. Finally, the evidence showed that the parties had engaged in previous unrelated business dealings. In those previous situations, a bookkeeper had always been involved to "set up papers." In this instance, however, no documents were ever prepared concerning a business relationship or joint agreement between the parties.

In light of the above evidence, the trial court correctly found that the parties' transaction did not constitute a joint venture. *Berger*, *supra* at 214-215. Moreover, we are not left with a definite and firm conviction that the trial court erred in finding that the transaction between plaintiffs and defendant constituted a loan. *Ambs*, *supra* at 651-652.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper

[1] The copies of the checks submitted to the trial court were microfilm duplicates of the originals, which were kept by the bank. Defendant asserted that the bank's certified records were incorrect. However, he did not explain how the checks could have been altered while in the bank's possession or custody, and otherwise offered no proof in support of his assertion.